



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 210325-0071]

RIN 0648-BK11

Fisheries of the Northeastern United States; Atlantic Herring; Framework

Adjustment 8

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: This rule approves and implements the 2021-2023 Atlantic herring fishery specifications and management measures. Framework Adjustment 8 is required to set the specifications for 2021-2023 and adjusts measures in the herring fishery to allow greater opportunity to catch Atlantic mackerel. The specifications and management measures are intended to meet conservation objectives while providing vessels with sustainable levels of access to the fishery.

DATES: *Effective date:* This action is effective March 29, 2021.

Comments due date: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES Copies of the analyses supporting this rulemaking, including the Framework Adjustment 8 environmental assessment (EA) prepared by the New England Fishery Management Council (Council) are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465-0492. The supporting documents are

also accessible via the Internet at: <https://www.nefmc.org/management-plans/herring> or <http://www.regulations.gov>.

You may submit comments, identified by NOAA-NMFS-2021-0025, by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter NOAA-NMFS-2021-0025 in the Search box. Click the “Comment” icon, complete the required fields, and Enter or attach your comments.

Instructions: Comments sent by any other method or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Aly Pitts, Fishery Management Specialist, (978) 281-9352.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) appear at 50 CFR part 648, subpart K. The regulations at § 648.200 require the Council to recommend herring specifications for NMFS’ review and publication in the **Federal Register**, including: The overfishing limit (OFL); acceptable biological catch (ABC); annual catch limit (ACL); management uncertainty; optimum yield (OY); domestic annual harvest (DAH); domestic annual processing (DAP); U.S. at-sea processing; border transfer; the sub-ACL for each management area, including seasonal periods as allowed

by § 648.201(d) and modifications to sub-ACLs as allowed by § 648.201(f); and the amount to be set aside for the research set aside (RSA) (0-3 percent of the sub-ACL from any management area) for up to 3 years. These regulations also provide the Council with the discretion to recommend river herring and shad catch caps as part of the specifications in addition to modifying the incidental possession limit during a closure of a sub-ACL and modifying seasonal area closures.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) permits NMFS to approve, partially approve, or disapprove measures proposed by the Council based only on whether the measures are consistent with the fishery management plan, plan amendment, the MSA and its National Standards, and other applicable law. We intended to propose measures recommended by the Council in September 2020. However, given the greatly reduced catch limits in the specifications, and in order to avoid potential overages that may occur at the start of the fishing year while higher specifications are in place, we are approving and implementing the 2021-2023 herring specifications and other management measures recommended by the Council through this interim final rule. We are requesting public comments on this action following the rule's publication.

The Northeast Fisheries Science Center (NEFSC) completed a management track assessment of the Atlantic herring stock in June 2020. This assessment showed that the stock is now overfished, but overfishing is not occurring. This is a change from the previous assessment in 2018 that indicated the stock was approaching an overfished condition, and overfishing was not occurring. Recruitment continues to be at historic low levels. Based on these results, NMFS officially notified the Council that the stock was declared overfished in early October 2020 following the Council's final action on Framework 8 in September 2020, and requested the Council develop rebuilding measures. The NEFSC will conduct a new herring management track assessment in

2022. This assessment will reassess projected biomass and recruitment trends and will be used to set herring specifications for 2023-2025. The specifications associated with this action estimate that overall herring biomass is expected to remain at relatively low levels in the next few years. The probability of the stock remaining overfished is relatively high under all alternatives considered for this action.

2021-2023 Atlantic Herring Specifications

Based on the findings of the June 2020 management track assessment, the Council recommended the 2021-2023 specifications for the herring fishery at its September 30, 2020, meeting. This rule implements the specifications detailed in Table 1, as recommended by the Council.

Table 1 -- 2021-2023 Atlantic Herring Specifications (mt)

Specification	2021	2022	2023
OFL	23,423	26,292	44,600
ABC	9,483	8,767	8,767
Management Uncertainty	4,669	4,669	4,669
OY/ACL	4,814*	4,098*	4,098*
DAH	4,814	4,098	4,098
Border Transfer	0	0	0
DAP	4,814	4,098	4,098
U.S. At-Sea Processing	0	0	0
Area 1A sub-ACL (28.9%)	1,391*	1,184*	1,184*
Area 1B sub-ACL (4.3%)	207	176	176
Area 2 sub-ACL (27.8%)	1,338	1,139	1,139
Area 3 sub-ACL (39%)	1,877	1,598	1,598
Fixed Gear Set-Aside	30	30	30
Research Set-Aside as percentage of sub-ACL	0**	0	0***

* If New Brunswick weir landings are less than 3,012 mt through October 1, then 1,000 mt will be subtracted from the management uncertainty buffer and reallocated to the Area 1A sub-ACL and ACL. Thus, the Area 1A sub-ACL would increase to 2,391 mt, and the ACL would increase to 5,814 mt in 2021.

** Because the RSA participants will not be pursuing RSA, we will not deduct it from the sub-ACLs.

*** RSA will to be revisited for 2023-2025 specifications.

Several factors contributed to the Council's ABC recommendations for 2021-2023. The ABC is reduced from the OFL to account for scientific uncertainty. The Council's Scientific and Statistical Committee (SSC) and the Council determined that a conservative method of management, specifically one that accounts for scientific

uncertainty, was essential due to the current status of the herring stock and the uncertainty surrounding estimates of biomass and recruitment. The SSC and the Council recommended a herring ABC of 9,483 mt for 2021 and 8,757 mt for 2022-2023 based on the control rule approved in Amendment 8 that reduces the available harvest to explicitly account for herring's role as forage in the ecosystem. The original projection for the 2023 ABC was 11,025 mt; however, the SSC and Council recommended reducing the ABC for 2023 to better address uncertainties in the projection estimates. For comparison, the proposed 2021 ABC is 51-percent lower than that currently in place for 2021.

The ACL is reduced from the ABC to account for management uncertainty. Currently, although the FMP allows for consideration of other aspects of management uncertainty (*e.g.*, uncertainty around discard estimates of herring caught in Federal and state waters), the only source for management uncertainty that is applied to the 2021-2023 ABCs are landings in the New Brunswick weir fishery. Catch in the New Brunswick weir fishery is variable but has declined in recent years. After considering a range of management uncertainty buffers, the Council recommended a buffer of 4,669 mt, consistent with average landings in the New Brunswick weir fishery over the last 10 years. The Council selected this method in Framework 6 (85 FR 26874, May 6, 2020) for setting the 2019-2021 specifications to account for variability in this fishery as well. The resulting ACLs are 4,814 mt for 2021 and 4,098 mt for 2022-2023.

The Council also recommended a provision that if weir fishery landings are less than 3,012 mt through October 1, NMFS would subtract 1,000 mt from the management uncertainty buffer and reallocate that 1,000 mt to the Area 1A sub-ACL and ACL. Currently, this provision is allowed if New Brunswick weir landings are less than 2,942 mt through October 1. The updated landings estimate is based on the most recent landings data. There is no trend in recent New Brunswick weir landings; using a 10-year

average is intended to reflect the variability of the fishery. This action implements these adjustments to the weir fishery reallocation provision.

Border Transfer

Border Transfer is a processing allocation available to Canadian dealers that is included in, and does not reduce, the domestic catch limits. The MSA provides for the issuance of permits to Canadian vessels transporting U.S. harvested herring to Canada for sardine processing. This action sets a 0-mt specification for border transfer for 2021-2023. Incentives are currently low to transfer fish to Canadian vessels and this allocation can be revisited in the future.

Research Set-Aside

During 2019-2021, the herring research set-aside (RSA) for each management area was set to 3 percent of each area's sub-ACL. Any unallocated or unused RSA is re-allocated to the sub-ACL and made available to the fleet before the end of the fishing year in accordance with the Administrative Procedure Act, provided that the RSA can be available for harvest before the end of the fishing year for which the RSA is specified. The Council recommended setting aside 3 percent of each sub-ACL for 2021 RSA, but zero percent for 2022 and 2023. Because an RSA award was granted using 2021 RSA, this set-aside recommendation would support that previously approved project. However, with recent sub-ACL reductions, it has been difficult to harvest RSA, and it may be more beneficial to have that allocation applied directly to the herring fishery while catch limits are so low. The participants in the RSA program will not continue their RSA project in 2021. Regulations at § 648.207(g) require that we reallocate any unallocated or unused RSA amount to the respective sub-ACL(s) if we determine that the RSA cannot be utilized by a project. As a result, we will not specify RSA for 2021 and instead will apply the RSA allocation directly to the sub-ACLs. The Council recently conducted a review of all RSA programs in this region and the report highlighted several

modifications that could be made to the herring RSA program to improve its effectiveness. Herring specifications are currently being set every two years, and herring RSA awards have recently been granted on 3-year cycles. A pause in the program provides time to sync the RSA program with the specifications cycle and potentially address other issues with the herring RSA program. Future specifications packages can adjust these percentages up to 3 percent, and the Council will reevaluate this decision when considering revisions to the 2023 specifications and beyond following the results of the next assessment.

River Herring and Shad Catch Caps

This action maintains status quo river herring and shad catch caps for 2021-2023 (see Table 2). These catch caps were originally set for the fishery in the 2016-2018 specifications, and were maintained in 2019 and 2020. Catch is tracked against river herring and shad catch caps on trips landing more than 6,600 lb (3,000 kg) of herring. Once a catch cap is reached, the possession limit for herring vessels using that gear type and fishing in that area (or the corresponding catch cap closure area) is reduced to 2,000 lb (907 kg) of herring for the remainder of the fishing year. These caps are intended to meet the original catch cap goals to provide a strong incentive for the herring fleet to continue to reduce river herring and shad catch, while allowing the fleet to fully harvest the herring ACL.

Table 2 -- 2021-2023 River Herring and Shad Catch Caps (mt)

Catch Caps	2021-2023
Midwater Trawl Gulf of Maine	76.7
Midwater Trawl Cape Cod	32.4
Midwater Trawl Southern New England	129.6
Bottom Trawl Southern New England	122.3

Carryover

Currently, regulations at § 648.201 require that up to 10 percent of the unharvested catch in a herring management area shall be carried over and added to that area's sub-ACL for the fishing year following when total catch is determined. This carryover increases the sub-ACL for that management area, but it does not increase the total ACL. Under Framework 6, NMFS temporarily suspended the carryover of unharvested catch for 2020 and 2021 because the amount of carryover was substantial relative to the reduced ACLs. Carryover of higher amounts of unharvested quota from 2018 relative to lower sub-ACLs in 2020 could have had potentially negative unintended consequences on some participants in the fishery that fish in different areas and seasons. This action maintains the automatic carryover of unharvested catch but changes the amount from up to 10 percent to up to 5 percent of each sub-ACL. The 5 percent carryover is expected to benefit the herring fleet with sub-ACL increases, while resulting in a reduced risk of potential negative consequences on the herring resource than the amounts carried over at 10 percent. Specifically, up to 5 percent of each area's sub-ACL in 2019 or 2020 would automatically rollover and be added to the sub-ACL for each herring management area in 2021 and 2022, respectively. For example, the 2021 the Area 1A sub-ACL increases by 218 mt (5 percent of the 2019 sub-ACL), which is an 18-percent increase of the 2021 sub-ACL. This benefit is broken down in Table 3 below. The overall ACL would not increase due to any carryover from a previous year. After the 2022 fishing year ends, the 5-percent automatic carryover would expire, and it would revert to up to 10 percent unless modified by a future action.

Table 3-- Summary of 2019 Sub-ACLs and Catch and Carryover for 2021 (mt)

Area	2019 Initial Sub-ACL	2019 Adjusted Sub-ACLs	2019 Final Catch	2019 Catch (Percent of Sub-ACL)	2019 Underages /Overages	Carryover for 2021 (5 percent of 2019 Sub-ACL)	2021 Initial Sub-ACLs	2021 Adjusted Sub-ACLs
1A	4,354	5,223	4,916	94	307	218	1,391	1,609

1B	647	628	159	25	469	32	207	239
2*	4,188	4,062	4,748	117	-686	NA	1,338	652
3	5,876	5,700	3,523	57	2,117	294	1,887	2,181

* Area 2 will be reduced in 2021 due an overage in that area in 2019.

The Council recommended status quo methods to set all other herring specifications, including DAH, DAP, U.S. at-sea processing, fixed gear set-aside, and management area sub-ACLs.

Other Measures

There are two measures in this rule intended to provide more opportunities for the herring and mackerel fisheries to achieve optimum yield by providing flexibility for the herring fleet to access the Atlantic mackerel resource during a sub-ACL closure, given the reduced sub-ACLs. These measures adjust the herring incidental catch possession limit in Areas 2 and 3 and eliminate the seasonal closure of Area 1B from January through April. While the sub-ACLs are reduced with this action due to the status of the resource, increasing the incidental possession limit allows for conservation of the resource as there is management uncertainty included in the specifications to avoid an overage.

The regulations at § 648.201 currently specify a 2,000-lb (907-kg) herring incidental catch possession limit per trip or calendar day when 92 percent of the sub-ACL for a herring management area (Area 1A, 1B, 2 and 3) or 95 percent of the total ACL for the herring fishery is projected to be caught. This possession limit makes it challenging to target mackerel during a sub-ACL directed fishery closure, especially in certain areas and seasons when herring and mackerel mix. These in-season herring possession limits apply to both limited access and open access herring permit holders. Vessels with limited access herring permits are not subject to a herring possession limit unless one of these triggers is met in-season.

This action implements a two-step incidental possession limit with similar incidental possession limits as in the Atlantic mackerel fishery for herring Management

Areas 2 and 3 while making no changes to the Management Area 1A and 1B possession limits or closure triggers. The measures in this rule set a higher initial possession limit of 40,000 lb (18,144 kg) per trip or calendar day that will be implemented when the fishery is projected to catch a lower closure trigger threshold of 90 percent of the Area 2 or 3 sub-ACL. The next closure trigger, setting the possession limit at 2,000 lb (907 kg) per trip or calendar day, will be implemented when the herring fishery is projected to catch 98 percent of the sub-ACL in Area 2 or 3. This two-step process is intended to slow the directed herring fishery while allowing vessels access to mackerel in the same areas. This measure will be in place until adjusted by a future Council action.

During development of Framework 8, NMFS cautioned that while this two-step process may offer herring vessels more access to herring when fishing for mackerel in the future when herring sub-ACLs are higher, the benefits may not be realized during times when sub-ACLs are low. Despite the lower sub-ACLs, the increase in the initial incidental possession limit is not expected to result in exceeding the ABC or result in overfishing. The reduced sub-ACLs in this action still take into account management uncertainty. Also, we expect our ability to monitor and project catch and implement possession limit adjustments with low sub-ACLs in a high volume fishery in a timely manner may require us to bypass implementing the 40,000-lb (18,144-kg) incidental possession limit and quickly implement the 2,000-lb (907-kg) possession limit to avoid overages and an increased risk of exceeding the ABC. Our management of Areas 1A and 1B is expected to be consistent with our past experience as this action makes no changes to the current possession limit adjustment triggers in Areas 1A and 1B and maintains the requirement to adjust to a 2,000-lb (907-kg) limit for all areas when 95 percent of the total ACL for the herring fishery is projected to be caught.

This action also removes the seasonal closure of Area 1B from January–April. The seasonal closure of Area 1B from January–April prevents vessels from targeting

herring and other species. Atlantic mackerel have been known to migrate through Area 1B during this time as they leave the Mid-Atlantic and head north in the spring. Providing herring fleet access to Area 1B earlier in the year could improve access to Atlantic mackerel overall.

Regulation Clarifications

We are modifying the regulations for fisheries of the Northeastern United States under the authority of section 305(d) to the MSA which provides that the Secretary of Commerce may promulgate regulations necessary to carry out an FMP or the Magnuson-Stevens Act. Specifically, at § 648.202, this rule clarifies that the restriction on using midwater trawl gear in Management Area 1A during June through September applies to all midwater trawl gear, not just those fishing for herring. The Council is supportive of this clarification.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Acting Assistant Administrator (AA) has preliminarily determined that this rule is consistent with the Herring FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

The Acting AA finds that prior notice and the opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), would be contrary to the public interest. The Council's recommendations for Framework 8 adopted at its September meeting and later submitted to NMFS prevented NMFS from publishing a proposed and final rule in time to implement final measures by January 1, 2021, which is the start of the fishing year. This rule sets the specifications for 2021-2023, which are greatly reduced from the current sub-ACLs. If these specifications are not set as close to the start of the fishing year as possible, there is a risk of an overage in the sub-ACLs, ACL, and ABC that will be set by this action, which would further impede conservation of the

herring resource. Any overages would be required to be reduced from next year's corresponding catch limits, reducing fishing opportunities next year. This action also includes measures to mitigate adverse economic impacts from lost opportunities to fish due to the reduced sub-ACLs by revising measures that would allow for the herring fleet to access the Atlantic mackerel resource during a sub-ACL closure. Directed fishery area closures can happen quickly in this high-volume fishery when the sub-ACLs are this low. Implementing these measures as quickly as possible will provide the industry greater opportunity to realize the intended benefits of these measures. The public is anticipating these measures, since the recommendations were voted on by the Council at the September meeting. The delay required for comments on these measures prior to their implementation would undermine the resource conservation and economic benefit intended by these measures. We are still soliciting and accepting additional public comments on this rule. For these reasons, prior notice and the opportunity for public comment, pursuant to authority set forth at U.S.C. 553(b)(B), would be contrary to the public interest.

Similarly, the need to implement these measures in a timely manner to put this interim final rule in place as close to January 1, 2021, as possible constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to establish an effective date less than 30 days after date of publication. These measures promote conservation goals of the FMP and allow for flexibility to herring vessels to access the Atlantic mackerel resource during a seasonal closure of the directed herring fishery. Delay in implementing this rule would put the herring resource at risk for further depletion in addition to preventing the herring fleet from access to mackerel in the event of a sub-ACL directed fishery area closure.

This rule has been determined to be not significant for purposes of Executive Order 12866.

This interim final rule is exempt from the procedures of the Regulatory Flexibility

Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

This interim rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 29, 2021.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, revise paragraph (r)(1)(ii)(B) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(1) * * *

(ii) * * *

(B) Attempt or do any of the following: fish for, possess, transfer, receive, or sell;
more than the possession limits specified at § 648.201(a) during a management area

closure, or from a river herring and shad catch cap closure area that has been closed to specified gear pursuant to § 648.201(a)(4)(ii), if the vessel has been issued and holds a valid herring permit

* * * * *

3. In § 648.201, revise paragraphs (a)(1)(i) and (ii), (b), (c), (d)(2), (g)(1) and (2), and (h) to read as follows:

§ 648.201 AMs and harvest controls.

(a) * * *

(1) * * *

(i) *Management area closure. (A) Areas 1A and 1B.* If NMFS projects that catch from Area 1A or 1B will reach 92 percent of the annual sub-ACL allocated to Area 1A or Area 1B, before the end of the fishing year, or 92 percent of the Area 1A sub-ACL allocated to the seasonal period as set forth in paragraph (d) of this section, beginning the date the catch is projected to reach 92 percent of the sub-ACL, vessels may not attempt or do any of the following: fish for, possess, catch, transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring per trip in or from the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(B) *Areas 2 and 3. (1) Incidental Possession Limit Adjustment – Phase 1.* If NMFS projects that catch from Area 2 or Area 3 will reach 90 percent of the annual sub-ACL allocated to Area 2 or Area 3 before the end of the fishing year, beginning the date the catch is projected to reach 90 percent of the applicable sub-ACL, vessels may not attempt or do any of the following: fish for, possess, catch, transfer, or land more than 40,000 lb (18,143.7 kg) of Atlantic herring per trip in or from the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs

(b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(2) *Incidental Possession Limit Adjustment – Phase 2.* If NMFS projects that catch will reach 98 percent of the annual sub-ACL allocated to Area 2 or Area 3 before the end of the fishing year, beginning the date the catch is projected to reach 98 percent of the sub-ACL, vessels may not fish for, possess, catch, transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring per trip in the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(ii) *Herring fishery closure.* If NMFS projects that catch will reach 95 percent of the ACL before the end of the fishing year, beginning the date the catch is projected to reach 95 percent of the ACL, vessels may not attempt or do any of the following: fish for, possess, catch, transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring per trip in all herring management areas, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

* * * * *

(b) A vessel may transit an area that is limited to the 2,000-lb (907.2-kg) limit or 40,000-lb (18,143.7-kg) limit specified in paragraph (a) of this section with less than 2,000 lb (907.2 kg) or less than 40,000 lb (18,143.7 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit or 40,000-lb (18,143.7-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as defined in § 648.2, and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(c) A vessel may land in an area that is limited to the 2,000-lb (907.2-kg) limit or 40,000-lb (18,143.7-kg) limit specified in paragraph (a) of this section with less than 2,000 lb (907.2 kg) or less than 40,000 lb (18,143.7 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit or 40,000-lb (18,143.7-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as defined in § 648.2, and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

* * * * *

(d) * * *

(2) *Area 1B*: 100 percent available for harvest during January-December.

* * * * *

(g) * * *

(1) Subject to the conditions described in this paragraph (g), unharvested catch in a herring management area in a fishing year (up to 10 percent of that area's sub-ACL) shall be carried over and added to the sub-ACL for that herring management area for the fishing year following the year when total catch is determined. For example, NMFS will determine total catch from Year 1 during Year 2, and will add carryover to the applicable sub-ACL(s) in Year 3. All such carryover shall be based on the herring management area's initial sub-ACL allocation for the fishing year, not the sub-ACL as increased by carryover or decreased by an overage deduction, as specified in paragraph (a)(3) of this section. All herring caught from a herring management area shall count against that area's sub-ACL, as increased by carryover. For example, if 100 mt of herring is added as carryover from Year 1 to a 5,000 mt sub-ACL in Year 3, catch in that management area would be tracked against a total sub-ACL of 5,100 mt. NMFS shall add sub-ACL carryover only if the ACL, specified consistent with § 648.200(b)(3), for the fishing year

in which there is unharvested herring, is not exceeded. The ACL, consistent with § 648.200(b)(3), shall not be increased by carryover specified in this paragraph (g).

(2) Carryover of unharvested catch to any herring management area's sub-ACL in the 2021 and 2022 herring fishing years, as described in this paragraph (g), shall be limited to 5 percent of unharvested catch in the 2019 and 2020 fishing years.

(h) If NMFS determines that the New Brunswick weir fishery landed less than 3,012 mt of herring through October 1, NMFS will subtract 1,000 mt from management uncertainty and reallocate that 1,000 mt to the ACL and Area 1A sub-ACL. NMFS will notify the Council of this adjustment and publish the adjustment in the **Federal Register**.

* * * * *

4. In § 648.202, revise paragraphs (a)(1) and (2) introductory text to read as follows:
§ 648.202 Season and area restrictions.

(a) * * *

(1) *Area 1A*. Federally permitted vessels fishing may not use, deploy, or fish with midwater trawl gear in Area 1A from June 1 September 30 of each fishing year. A vessel with midwater trawl gear on board may transit Area 1A from June 1-September 30, provided such midwater trawl gear is stowed and not available for immediate use as defined in § 648.2. Vessels may use any authorized gear type to harvest herring in Area 1A from October 1 - May 31.

(2) *Inshore*. Federally permitted vessels may not use, deploy, or fish with midwater trawl gear within the inshore midwater trawl restricted area. A federally permitted vessel with midwater trawl gear on board may transit the inshore midwater trawl restricted area, provided such midwater trawl gear is stowed and not available for immediate use as defined in § 648.2. Vessels on a declared research set-aside trip are permitted to use, deploy, or fish with midwater trawl gear within the inshore midwater trawl restricted areas provided the vessel is operating as authorized by an exempted

fishing permit. The Inshore Midwater Trawl Restricted Area includes all state and Federal waters between the U.S. coastline and the following points, connected in the order listed by straight lines, unless otherwise noted:

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[FR Doc. 2021-06751 Filed: 3/29/2021 4:15 pm; Publication Date: 4/1/2021]